Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

NO. 76-544

PATRICIA STRICKLER, ADMINISTRATRIX OF THE ESTATE OF FRANK R. STRICKLER, DECEASED, AND PATRICIA STRICKLER, AN INDIVIDUAL

Respondints,

V.

NEFF TRAILER SALES, INC., A VIRGINIA CORPORATION

Petitioner,

BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUT

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REASONS FOR REFUSING THE WRIT

As stated by the Petitioner, Virginia Law was applied and governed the question of punitive or exemplary damages. In Weatherford v. Birchett, 158 Va. 741, 164 S.E. 535 (1932), the Virginia Court defined exemplary damages as follows: "'Exemplary damages' are those given, not as pecuniary compensation for the loss actually sustained by the plaintiff, but as a warning to the defendant and to others, to prevent repetition, or commission, of similar wrongs.". This theory of punitive damages was also set forth in Zedd v. Jenkins, 194 Va. 704, 74 S.E.2d 791 (1953) and Blackwell v. Landreth, 90 Va. 748, 19 S.E. 791 (1894). A party is able to recover punitive damages where the act complained of is accompained by certain cir-

cumstances of aggravation. Most cases include as circumstances of aggravation the following: fraud, malice, oppression or such wilful conduct as shows an absolute disregard for the rights of others. Wood v. American National Bank, 100 Va. 306, 40 S.E. 931 (1902); Fishburne v. Engledove, 91 Va. 548, 22 S.E. 354 (1895). Petitioner contends that punitive damages cannot be awarded unless there is a showing of actual or express malice. Further that malice can only be established by a showing of ill will, grudge, etc.

However, this narrow view ignores the language in the cases setting forth the circumstances of aggravation that must be established in order to warrant the award of punitive damages. The Courts have always listed said circumstances of aggravation

in the alternative and not cumulative. In 22 Am.Jur. 2d, Damages, §249 the general rule regarding the circumstances when punitive damages are recoverable is set forth. After listing several circumstances of aggravation the section goes on to state that, "In the absence of one or more of such elements, the damages recovered must be confined to compensation for the injury complained of.". Said section further states that, "One or more of the conditions under which exemplary damages are recoverable is sufficient.".

Respondent in her pleadings and throughout the trial has always maintained that the actions of the Defendant constitute intentional, wilful and gross fraud and that such wanton action by the Petitioner does show an absolute disregard for

the rights of others. Therefore, the acts of the Petitioner were accompanied by sufficient circumstances of aggravation to warrant the award of punitive damages.

In addition to the above, the Virginia Court has maintained in several cases that where an act is done in an intentional, wilful, and wanton manner, manifesting an absolute disregard for the rights of others, to the injury of another, then actual malice need not be shown to entitle the aggrieved party to punitive damages. Such actions in and of themselves constitute malice and a showing that the acts were prompted by vindictiveness, ill will, grudge, anger or spite is note necessary. See Baker v. Marcus, 201 Va. 905, 114 S.E. 2d 617 (1960); Worrie v. Boze, 198 Va. 533, 95 S.E.2d 192 (1956); Friedman v.

Jordan, 166 Va. 65, 184 S.E. 186 (1936); Anchor Company, Inc. v. Adams, 139 Va. 388, 124 S.E. 438 (1924); Baker v. Carrington, 138 Va. 22, 120 S.E. 856 (1924); Bolton v. Vellines, 94 Va. 393, 26 S.E. 847 (1897); Norfolk & Western Railway Co. v. Anderson, 90 Va. 1, 17 S.E. 757 (1893).

In the evidence offered at trial, the Respondent presented many instances of conduct on the part of Petitioner, its employees and agents, as proof of the wilful conduct of the Petitioner manifesting an absolute disregard for the rights of the Respondent and her husband. In the cross examination of Petitioner's witnesses, concerning their actions and the documents executed during the transaction even more instances of wilful conduct on their parts was evinced. At the conclusion of all of

the evidence the Judge of the United States District Court for the Northern District of West Virginia closely scrutinized the evidence presented and the Virginia Law concerning the question of punitive damages and determined that sufficient evidence was presented to warrant submission of the question of punitive damages to the jury. Virginia Law is quite definite in its view that whether or not sufficient evidence has been presented to warrant sending the question of punitive damages to the jury is for the judge to decide. Turk v. Martin, 124 Va. 103, 97 S.E. 351 (1918).

The jury in exercising their obligations as triers of fact determined that the Petitioners actions were of such wanton and wilful nature and did manifest and absolute disregard for the rights of

of the Respndent and to her injury. They, therefor, found in favor of the Respondent and also awarded the punitive damages. The jury prior to their deliberations were fully and fairly instructed by the Court regarding the issues of the case and the punitive damages aspect. The punitive damages awarded by the jury was reasonably proportionate to the amount of compensatory damages.

The District Court had the opportunity to again review the law on punitive damages and the jury's award of same at the time Petitioner filed its post-trial motions. The Court upheld its finding and the jury's verdict.

Upon an appeal by the Petitioner, the United States Circuit Court of Appeals for the Fourth Circuit reviewed the law, and

the major portion of the trial record regarding the issue of punitive damages and whether or not it should have been presented to the jury. After careful review and argument of counsel the Court made the following determination:

> "We are of opinion that the evidence presented by the plaintiff was sufficient to support a finding of a conscious disregard by Neff of the rights of the Stricklers and supports the jury's award of punitive damages. As such, the question is one for the jury as trier of fact, not for the reviewing court." (This Honorable Court is referred to the copy of the Circuit Court's opinion as reprinted in the Petition for Writ of Certiorari, Appendix, p. 6)

Petitioner's contention that their actions were not fraudulent and wilful but resulted rather from mistake or error on its part was presented at the trial. However, the exhibits and evidence pre-

sented by Respondent convincingly contradicted this theory of defense. Based on the evidence the Court permitted the question of punitive damages to go to the jury. The jury in reviewing the evidence presented by both sides determined the issue in favor of Respondent.

CONCLUSION

Respondent would state that the law surrounding the question of punitive damages in the case in question was properly developed both in pre-trial proceedings and during the trial; that the United States District Court properly applied the Virginia Law in permitting the question of punitive damages to go to the jury; that the jury's award was properly made; that the actions of the District Court and the jury were reviewed by the

Circuit Court of Appeals and were upheld; and that no error was committed to the prejudice of Petitioner's rights. Therefore, Respondent would pray that the Petition for Writ of Certiorari be refused.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 33 of the Rules of the Supreme Court of the United States, I hereby certify that I have this 24TH day of NOVEMBER, 1976, filed the required copies of the Brief in Reply to Petition for Writ of Certiorari by mailing the required copies to Michael Rodak, Jr., Clerk of the Supreme Court of the United States at his address in Washington, D. C. 20543 and to Lewis F. Jolly, Esquire, 92 North Liberty Street, Harrisonburg, Virginia 22801, Counsel for Petitioner.

James Paul Geary

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Attorney for Appellee